

Exhibit Q

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART TAP1
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4 THE PEOPLE OF THE STATE OF NEW YORK :
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- against - : INDICTMENT
JACOB DASKAL, : NUMBER:
Defendant. : 3569-2018
CALENDAR CALL
-----X
Supreme Court
Via Skype videoconference
August 12, 2020
B E F O R E :
HONORABLE DINEEN RIVIEZZO,
Justice of the Supreme Court
A P P E A R A N C E S :
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Brooklyn, New York 11201
BY: KEVIN O'DONNELL, ESQ.
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BY: EVAN LIPTON, ESQ.
KIYOKO PANZELLA, RPR
SENIOR COURT REPORTER

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1 THE CLERK: On the TAP1 trial calendar, No. 3,
2 Indictment 3569 of 2018, Jacob Daskal. Defendant excused
3 for this appearance.

4 Appearances, please.

5 MR. O'DONNELL: Kevin O'Donnell for the People.

6 Good afternoon, everyone.

7 MR. LIPTON: Evan Lipton, 125 Park Avenue, for
8 Mr. Daskal, whose appearance has been excused.

9 THE COURT: Yes, I did excuse his appearance. I
10 meant this to just be kind of a status, you know, post --
11 or pre -- we're in the middle of pandemic, not
12 post-pandemic. Post-pandemic makes it sound like the
13 pandemic is over, and unfortunately, as we all know since
14 we're all here on video, it's far from over.

15 But what I meant to say was, as I was saying off
16 the record, I only presided over this record one time,
17 which is February 13th after I took the TAP part over. The
18 parties had indicated to me at that time that there were
19 still motions to controvert the search warrants that
20 Judge Miller had not decided, and so I took them and we put
21 the case over from March 30th for purposes of that -- for
22 that purpose.

23 I have those motions here. I'm in the middle now
24 of working my way through them but thought it would be
25 helpful to have a discovery conference to see what might

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1 have occurred from February to now, and I realize there's
2 some things that we need to put on the record.

3 Mr. O'Donnell, I'll let you make the record again
4 that you were just telling us off the record about the
5 Eastern District. Go ahead.

6 MR. O'DONNELL: Right.

7 Judge, as you said off the record, I had said this
8 first in court on February 11th of 2019, that the federal
9 government is -- intends to take the case. The complaining
10 witness shortly before then had a forensic interview with
11 the federal government. That was done. I'm not sure
12 exactly who did the interview, but it was, I believe, a
13 recorded interview in late January of 2019.

14 Since then I've been waiting for them to take the
15 case, so to speak. They have taken a large amount of the
16 electronic evidence that was recovered in the search
17 warrant and obtained search warrants for that material.

18 THE COURT: I'm sorry, and what? And what?

19 MR. O'DONNELL: They've done their own search
20 warrants of the computers and the phones.

21 THE COURT: Oh.

22 MR. O'DONNELL: Well, I'm not sure about the
23 phones, but definitely computers.

24 They -- March of this year I had met with two of
25 the US attorneys who were working on the case in person to

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1 just go over last-minute things, and my anticipation was
2 they were moving forward with charges at that time. I had
3 a conversation yesterday, or it could have been the day
4 before. I'm losing track of days, but I believe it was
5 yesterday with the assigned U.S. attorney who indicated to
6 me, you know, they're just waiting on what charges they're
7 going to be going forward with.

8 One of the things that I had mentioned was
9 Brooklyn doesn't have any sitting grand juries, and
10 Mr. Lipton, who I know does federal practice, correctly
11 said that in Islip there are grand juries sitting. The
12 folks down the street from my office have gone out and
13 presented cases in Islip and they're now getting motions
14 that this was an improper procedure so until the courts
15 determine whether it is a legitimate thing to do the U.S.
16 Attorney's Office in downtown Brooklyn is working under the
17 assumption that they don't have a working grand jury at
18 this time. I don't know when they're gonna impanel grand
19 juries. My guess is in September, so that's -- that's
20 where we are in terms of the federal government.

21 I was told, the last conversation I had with them,
22 that they are still going to go forward with the case, and
23 I will agree it's taken them a very, very long time.

24 I did do a -- we did not do a certificate of
25 compliance in this case yet. I did do an NDF. I believe I

1 attached the police officer Giglio material to it.

2 I'm looking at Mr. Lipton's letter from March of
3 this year. Other than contact information, which I have to
4 verify for certain people, and I'm pretty sure for the
5 complaining witness. I don't know where she's currently
6 residing. When I do find that other contact information
7 I'll either be providing email address or seeking a
8 protective order, and then the only other thing that's in
9 there is designate which law enforcement officers are going
10 to be called as witnesses so if I didn't do that in the NDF
11 then I do need to do that, but I don't believe there's any
12 other material that was listed in his letter that the
13 People are aware of or posses.

14 One of the things was, "Please provide all grand
15 jury transcripts." The only two people who testified in
16 the grand jury were the complainant and the arresting
17 officer, and that's been provided to Counsel.

18 THE COURT: Mr. Lipton, just so you know, sir,
19 that letter that you sent, I'm assuming that you cc'ed
20 Court, but it's not in the court file so if you want it as
21 part of the court file, sir, you'll have to email it to
22 myself or to my court attorney.

23 MR. LIPTON: Okay. Thank you. I will do so. I
24 did not copy the Court.

25 THE COURT: Oh, all right.

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1 MR. LIPTON: At this point in time, you know, it's
2 unclear what the enforcement mechanisms are for Article 245
3 are so I was trying to work it out in the first instance.

4 THE COURT: Sure, no, I appreciate that. I just
5 -- again, I didn't know if you did or didn't, but I just
6 wanted to let you know that if you had that it's not in the
7 court file, but I appreciate that you tried to work it out.
8 From a judge's perspective that's what I wish that all
9 litigants would do, is work these things out without having
10 to involve me, but I just want to let you know that it
11 wasn't in the file if you had meant it to be in the file.

12 MR. LIPTON: Thank you.

13 THE COURT: Yeah.

14 MR. LIPTON: So I respectfully disagree with
15 Mr. O'Donnell's statement that all of the discovery has
16 been provided and that nothing else in my -- in my letter
17 or that's required under the discovery statute would still
18 in the possession of District Attorney's Office, but I
19 recognize that the correct time to challenge that might be
20 at the time that a certificate of compliance is issued so I
21 would urge that if the -- if the People believe that they
22 have complied with discovery that they issue such a
23 certificate.

24 I'll just point out -- I know the Court doesn't
25 have this letter in front of the Court, but for

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1 Mr. O'Donnell's benefit, I'm looking at my request for
2 Giglio material regarding the complaining witness; my
3 request for text messages sent by the complainant witness
4 to her schoolmates which are discussed in the search
5 warrant; names of contact information for anybody else that
6 has any information about this case, which is specifically
7 enumerated to 245. I know that there's an organization
8 called the Amudean (phonetic) Organization that's been
9 involved in this and they have to have had some
10 correspondence with the People, and, I mean, are there any
11 other witnesses in this case? Because at this point it
12 doesn't look like there are.

13 THE COURT: Well --

14 MR. LIPTON: Were there any medical records? Were
15 there any psychiatric records? This is a -- this is a
16 first degree rape case. I haven't seen anything.

17 MR. O'DONNELL: If I could just -- there's --

18 I don't have text messages from the complaining
19 witness. I mean, I know the Court doesn't have the letter.
20 It's the second bullet point. There are no medical
21 records. There are no psychiatric records, and I'm
22 looking. If there's other witnesses that I need to list
23 out, I will certainly list them out. I just have to go
24 back and look at the NDF as to whether or not everyone is
25 listed in there or not.

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1 THE COURT: So, I mean, look, I don't know. I'm
2 at a little bit of a loss here because -- I guess we all
3 are because from what the steps that you're describing,
4 Mr. O'Donnell, on the one hand it does seem as if they've
5 done more in the last several months than they did in the
6 year proceeding, right. In the year proceeding they,
7 meaning the Eastern District -- and so they have made some
8 steps towards taking the case from you, but at the same
9 time, you know, they haven't done it yet so, you know, I
10 think Mr. Lipton already indicated that he's not consenting
11 to time.

12 Is that right, Mr. Lipton?

13 MR. LIPTON: Correct.

14 THE COURT: Yeah, so, you know, until they take it
15 they haven't taken it, right, and it's still here and it's
16 still pending and we have to go forward, you know, up until
17 the time in which you tell us that you've dismissed it so,
18 you know, there's no exception to -- well, the feds may be
19 taking this is not an exception to us going forward, I
20 don't believe, so I think we have to go forward, right, and
21 wait. If -- when and if they take it, they take it. Now,
22 it could be as soon as next month, but it may not be.

23 Unfortunately we're in an unfortunate time so my
24 suggestion would be, Mr. O'Donnell, that you respond to
25 Mr. Lipton's letter in writing and both sides can, you

1 know, submit the letters to the Court, and after
2 Mr. O'Donnell responds in writing, Mr. Lipton, if you have
3 an objection or you take issue with his response then we
4 can resolve it, but like you said, without the letter in
5 front of me it's very hard -- I can't -- you know, each of
6 you listing a recitation of things, that's not how I can do
7 it, but not only that, the amendments now, the amendments
8 from April say that it has to be in motion. Any -- it has
9 to be in writing, objections to discovery, so I would just
10 put it in writing. You already did, Mr. Lipton. If
11 there's anything you want to add, Mr. O'Donnell can respond
12 in writing, and we can discuss it at another time.

13 In the interim I'll finish up the decision on
14 these warrants, the motions to controvert, and we'll give
15 it another adjourn date for those purposes, and if it turns
16 out that in the interim that, you know, the feds take the
17 case, so be it, but until then I think we have to go
18 forward because the case is from 2018 and, you know, I
19 think that's just the right thing to do.

20 So what else has to be put on the record?
21 Anything else?

22 MR. LIPTON: I don't believe so.

23 MR. O'DONNELL: No.

24 THE COURT: No?

25 MR. O'DONNELL: Not from the People.

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1 THE COURT: Okay.

2 Mr. Lipton, anything else from you?

3 MR. LIPTON: Not from the defense.

4 THE COURT: All right.

5 So let's just pick a date in -- I have a couple
6 weeks' vacation so let's just -- if we could pick maybe the
7 end of September, the beginning of October, and I'll have a
8 decision, hopefully, and we can then address whatever
9 discovery is outstanding before that time.

10 THE CLERK: The week of October 6th.

11 THE COURT: October 6th, the week of October 6th.

12 MR. LIPTON: Fine. Name your time.

13 THE COURT: Mr. O'Donnell, is that all right?

14 MR. O'DONNELL: Any time's fine with me. I'm just
15 looking at my calendar. I know Succos begins on
16 October 2nd and ends on October 9th. I don't know what
17 days are days of observance or not for Mr. Lipton's client.

18 MR. LIPTON: Any day that's observable is a day of
19 observance so thank you for bringing that up.

20 Yom Kippur is the 28th.

21 MR. O'DONNELL: Succos and the two other holidays
22 end the Sunday of Columbus day weekend so anything from the
23 2nd to the 11th of October.

24 MR. LIPTON: Okay.

25 You will know, I would like to put this on as soon

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1 as possible for --

2 THE COURT: So when? What about the end of
3 September, then, before those holidays? Is there a date
4 before those holidays begin?

5 MR. LIPTON: The week of the 21st?

6 THE COURT: Yeah, that's fine.

7 You want September 22nd?

8 MR. LIPTON: Sure.

9 Are we still presuming that these are remote
10 appearances?

11 THE COURT: I wish I had a good answer for you for
12 that question. I don't know. I mean, what I do know is
13 that the next set of judges who are going to be doing in
14 person appearances are the TAP judges. My courtroom and my
15 colleague's courtroom have already been fitted for the --
16 with the Plexiglass, but I haven't been given a date in
17 which that's going to start to occur so I think that, you
18 know, if you want to come in I can always arrange for you
19 to come in, in the ceremonial courtroom and we give you a
20 time, you know, that that happens, but I don't know, you
21 know, whether or not all my cases will be in person by then
22 or not. I have no way of knowing that yet.

23 MR. LIPTON: I would only take the position that a
24 personal appearance is required when something actually
25 really substantive is happening in a case.

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1 THE COURT: All right, so we could leave it this
2 way for September 22nd and perhaps --

3 MR. O'DONNELL: Can I interject for a second?

4 THE COURT: Yes.

5 MR. O'DONNELL: We're on a rotating work schedule
6 for my office so I'm actually in the office the following
7 week so, like, the 29th, 31st, or October 1st.

8 THE COURT: Okay.

9 You mean just in case you have to come in?

10 MR. O'DONNELL: Right. If it's an in-person
11 appearance the 22nd I probably -- I probably could get to
12 go in but I have to go through a whole process.

13 THE COURT: All right, so let's just pick the next
14 week just in case. What's the next week then that's not
15 the Jewish holidays?

16 MR. LIPTON: Yom Kippur is on the 28th to the
17 29th. I mean, can we do the 22nd and do it remote? I'm
18 not going to object to remote.

19 THE COURT: All right, so we'll just leave it that
20 way. September 22nd, and we'll leave it remote.

21 MR. O'DONNELL: Okay. That's fine with me, but if
22 it's going to be in person I probably can do it. It's just
23 I have to go through some hoops to get approval from my
24 office.

25 THE COURT: Right.

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1 All right. We'll just leave it September 22nd to
2 be remote, and perhaps it's a good idea for your client to
3 be there too, then.

4 MR. LIPTON: Okay.

5 THE COURT: Okay. So September 22nd. We'll send
6 you a Skype link. Let's just pick a time. Hold on one
7 second. You want to just say 10:00 then?

8 MR. LIPTON: Sure.

9 THE COURT: Okay, so we'll send you a Skype link
10 for September 22nd at 10:00, and you'll just have to
11 forward the Skype link to your client, Mr. Lipton.

12 MR. LIPTON: Yep.

13 THE COURT: Okay.

14 MR. LIPTON: Okay. Good seeing everyone. Thank
15 you.

16 THE COURT: Thank you very much. Take care.

17 MR. O'DONNELL: Thank you.

18 * * * * *


19 The foregoing is hereby certified to be a true and
20 accurate transcript of the proceedings as transcribed from
21 the stenographic notes.

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SENIOR COURT REPORTER